

Mao Reply Declaration

**Redacted Version of
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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all similarly
situated,

Plaintiffs,

VS.

GOOGLE LLC,

Defendant.

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Case No.: 4:20-cv-03664-YGR-SVK

**THIRD DECLARATION OF MARK C.
MAO IN SUPPORT OF PLAINTIFFS'
REQUEST FOR AN ORDER TO SHOW
CAUSE (MAO REPLY DECLARATION)**

The Honorable Susan van Keulen
Courtroom 6 - 4th Floor
Date: April 21, 2022
Time: 10:00 a.m.

DECLARATION OF MARK C. MAO

I, Mark C. Mao, declare as follows.

1. I am a partner with the law firm of Boies Schiller Flexner LLP, counsel for Plaintiffs in this matter. I am an attorney at law duly licensed to practice before all courts of the State of California. I have personal knowledge of the matters set forth herein and am competent to testify.

2. I submit this Declaration with Plaintiffs' Reply Brief in Support of their Request for the Court to issue an Order to Show Cause for Why Google Should Not Be Sanctioned for Discovery Misconduct.

3. From Google's initial list of identified logs and data sources, produced on November 18, 2021, Google identified only [REDACTED] logs with the [REDACTED] bit, and none with the [REDACTED] or [REDACTED] bits. Dkt. 338-1. The [REDACTED] logs that Google identified that contain the [REDACTED] bit are the [REDACTED]
[REDACTED] and [REDACTED] logs.

4. As part of the Special Master process, Google produced a version of the schema for these [REDACTED] logs on December 1, 2021. But these versions did not contain the [REDACTED] bit. Google now claims that this bit was omitted since it was not among the largest 100 fields in each log. (At the time Plaintiffs filed the Opening brief, Plaintiffs did not know that Google also altered the schema for the [REDACTED] log.)

5. But weeks prior, Google produced schema with more than 100 fields for a number of logs and sources, including [REDACTED] fields for the [REDACTED], [REDACTED] for the [REDACTED], and [REDACTED] fields for [REDACTED]

6. Once the dispute that became the basis for Plaintiffs' Motion for an Order to Show Cause arose, Google produced different versions of schema for some of the logs that contain the [REDACTED] bit, this time which contained the bit.

7. Google also hid the [REDACTED] field from the schema productions. Two examples of this are the [REDACTED] and the [REDACTED], produced by Google on March 11, 2022. Once Google re-ran the schema for these [REDACTED] logs, the

1 schema showed the [REDACTED] fields. Although Mr. Josef Ansorge for Google
 2 initially called [REDACTED] a “search log,” he later admitted in our meet and confers that
 3 neither log was a search log.

4 8. Google has not produced complete schema for any logs that contain the
 5 [REDACTED] bit.

6 9. Google still refuses to confirm whether they are withholding any *other* Incognito
 7 detection bits or *other* logs or sources containing any such bits.

8 10. Similarly, Google has refused to respond to Plaintiffs’ inquiries seeking to know
 9 why Google did not timely produce documents concerning the [REDACTED] bit. In
 10 the Opposition Brief, Google suggests that it produced documents in the Fall of 2021 making clear
 11 that (i) a “technical design” for the bit dated “May 4, 2021” was “APPROVED” and (ii) Google
 12 was “logging” the field “into [REDACTED]” by June 2021. Opp. 5 (citing Trebicka Decl. Ex. 13). But the
 13 May 4, 2021 version of the design document reflected an older plan to log in [REDACTED] logs which was
 14 abandoned the next day on May 5, 2021 to log in [REDACTED] logs. Opening Mao Decl. ¶ 12 As my
 15 Opening Declaration pointed out, Google did not produce the May 5, 2021, version of the
 16 document until January 31, 2022. *Id.* ¶ 3. Plaintiffs have sent Google’s counsel multiple messages
 17 demanding an explanation for why the May 5, 2021, version of the document was not produced
 18 from Mr. Liao’s custodial files last fall. Google has never responded.

19 11. Attached hereto as **Exhibit 1** is a true and correct copy of an April 1, 2022 letter
 20 from Mr. Josef Ansorge, counsel for Google, to Special Master Brush and myself. Plaintiffs do
 21 not have any actual documents with these “proto comments,” and the comments were only
 22 produced to Plaintiffs as part of this letter. Google has not explained to Plaintiffs why the
 23 comments would not have been produced as part of Google’s prior document productions.

24 12. Attached hereto as **Exhibit 2** is a true and correct copy of a March 15, 2022 email
 25 from Mr. Josef Ansorge, counsel for Google, to Special Master Brush and myself.

26 13. Attached hereto as **Exhibit 3** is a true and correct copy of the transcript from the
 27 March 23, 2022 conference between the parties and Special Master Brush.

1 14. Attached hereto as **Exhibit 4** is a true and correct copy of a document Google
2 produced in discovery labeled GOOG-BRWN-00846508. The document was produced on March
3 2, 2022.

4 15. Attached hereto as **Exhibit 5** is a true and correct copy of a document Google
5 produced in discovery labeled GOOG-CABR-03849022. The document was produced on
6 September 28, 2021.

7 16. Attached hereto as **Exhibit 6** is a true and correct copy of the stipulation that Google
8 proposed to Plaintiffs in response to the Court's order requiring Google to provide additional
9 information about the [REDACTED]. bit Dkt. 505-1. Google sent this draft to Plaintiffs
10 on March 25. Plaintiffs responded that day with a follow-up question. Google has not responded,
11 which is why the stipulation has not yet been finalized and filed.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 11th day of April, 2022, at San Francisco, California.

/s/ *Mark Mao*